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Current Topics.

An Unborn Child's Right to Live.

IN BINDING over a woman who had procured her own abortion recently, MCCARDIE, J., is reported to have observed: "I express the view clearly that, in my opinion, the law of abortion as it exists should be, and ought to be, substantially amended. It is out of keeping with the conditions that prevail in the world around us." It appears evident from the case that he deemed that the law should be relaxed and not strengthened. So far as applicable, it is contained in ss. 58 and 59 of the Offences against the Person Act, 1861, and he can only have meant that the sections should either be wholly repealed, or, at least, that abortion should be made lawful in certain circumstances. We venture to regret this pronouncement, and to dissociate ourselves from it. The above case and a subsequent one in which the judge took the same course, were, no doubt, both of the kind in which the women concerned had all possible excuse that could be made for their conduct. Both were poverty-stricken, and the first had already had seven children, and knew that her husband would not work for her and his family. The second woman had borne a child afflicted with mental disease, and feared for the next. Nevertheless, the doctrine that human life can be taken because it may prove inconvenient to those who may be associated with it is, surely, too dangerous for adoption by the law of England, apart from the strong condemnation of the Churches. In 71 SOL. J., 217: "The Rights of an Unborn Child," will be found a quotation from Mr. Justice BUTLER, enumerating a considerable list of such rights. Obviously, to confer any one of them would be a mockery, if the right to live were denied. The harm which abortion does to the health of any woman and her future chance of bearing healthy children admits of no doubt. Abortion, however, should be sharply distinguished from contraception, which is not criminal, and, though disliked by theologians, does not involve taking a life in being, nor, perhaps, does harm to the health of the woman who practises it. Of the two evils, if it be an evil, it is unquestionably the less, and it is hardly to be supposed that any woman with sense would prefer to wait and then procure or suffer her own abortion if she understood the immediate use of the practise of contraception. Responsibility for the offences of abortion (in case of professional abortionists often punished with penal servitude) cannot, therefore, be entirely disclaimed by those who strain every nerve to prevent the knowledge of contraceptive methods reaching poor women such as those above, while it is entirely accessible to other classes.

The Theory of Punishment.

IN THE above case MCCARDIE, J., is also reported to have said: "The punishment inflicted by a judge must depend in a large measure upon the view that his mind and conscience has formed of the legislation with which he has to deal." This is, at least, an extremely debatable proposition, and, some may deem, tends to give an unfortunate "lead" to magistrates who may hereafter deal with such offences as selling Irish lottery tickets, street betting, and those against "Dora," or, to be accurate, since the lady is dead, against her numerous progeny. Millions of Irish lottery tickets are sold in England, and a magistrate, exercising his common-sense only, might like to inflict a nominal penalty in every case or none at all, even if he had not happened to buy a ticket or two himself. Nevertheless, it is assuredly the duty of a judge or magistrate to uphold any law which may be in force, however strong his personal view may be that it is foolish or worse. In *Conway* v. *Wade* [1908] 2 K.B. 844, FARWELL, L.J. (p. 856), quoted Lord CAMPBELL in *R.* v. *Skeen* (1859), 28 L. J. (M.C.) 91: "Where by the use of clear and unequivocal language, capable of only one construction, anything is enacted by the Legislature, we must enforce it, although in our opinion it may be absurd or mischievous." In binding over these two prisoners, MCCARDIE, J., took a course which, with possibly one exception, any twentieth century judge might have done. They were ignorant women, sorely tempted, and every mitigating circumstance was as strong as possible, so that the same nominal sentences might have been inflicted by a judge who, in the next case, would have sent a professional abortionist to penal servitude. If judges find a law is working injustice or hardship, it is right for them to call attention to the matter, as BARNES, P., did in *Dodd* v. *Dodd* [1906] P. 189, and FARWELL, L.J., in *Conway* v. *Wade*, *supra*, but it is submitted that a judge's own personal or religious views as to the heinousness or otherwise of a particular offence should be eliminated as a factor in punishment by his oath of office.

Quit-Rent Services.

THE QUAINT ceremonial which takes place annually at the Law Courts in October, when the city solicitor renders quit rent services to the Crown, on behalf of the Corporation of the City of London, takes us back to feudal times, and it is interesting to recall the fact that, although the feudal system has long since disappeared, it still determines (in this particular manner) the extent and form of property in land in respect of which "quit rent" remains payable. Under the provisions of Pts. V and VI and Scheds. 12, 13 and 14 of the Law of Property Act, 1922 (as amended by the later statute of 1924); these picturesque incidents will, of course, come to an end, and the handing over of horseshoes and nails in respect of an old forge, and of a hatchet and billhook as quittance for rights connected with a piece of waste land in the County of Salop, will then no longer be witnessed. It is of interest to note that, according to BOUVIER (Law Dictionary, 8th Ed.—an American publication) quit rents in England were originally rents reserved to the King or to a private proprietor on an absolute grant of waste land for which a price in gross was paid, but a nominal rent was reserved as a feudal acknowledgment of tenure. The change from feudal services to money rents had become general by about the beginning of the sixteenth

century—the villains during the middle ages have gradually commuted their food and labour dues for an annual money payment. BOUVIER says that the feudal notion of land tenure, i.e., that the soil belonged to the Crown, was carried to the New World, and may be traced in all the early charters. Sometimes it was granted to proprietors and sub-infeudation was permitted. It was part of the general colonial policy of the British Crown as a means of emphasising the imperial control. The system became firmly rooted in the southern American colonies, but in other states it broke down. In Pennsylvania it fell as low as one halfpenny per acre, and sometimes the rent was a red rose, a beaver skin, or a bushel of wheat. In nearly all the colonies, the history of this quit rent was one of persistent struggle between the Governor and the Assembly—the former representing the Crown or the proprietors and the latter the tenants. BLACKSTONE, in his "Commentaries," describes this form of tenure among other manorial incidents, and it is also dealt with under "Rent" in "Stephen's Commentaries."

Statutory Survivals.

THE PERSISTENCE in the statute book of various provisions which, although from the very fact that they are there are technically operative, have for the most part been quietly ignored and thus treated as obsolete, lends force to the suggestion that a complete purging of the older Acts of Parliament, of whose sections this may be said might, with advantage, be undertaken. In England the doctrine that a statute may be repealed by the fact that it has fallen into desuetude finds no place; it is otherwise in Scotland, but apparently only in reference to Acts of Parliament passed before the Union of 1707. In Scotland, however, just as in England, a statutory provision may be in fact, although not in law, repealed by it being ignored altogether. A curious example of this is furnished by s. 16 of the Bank Notes (Scotland) Act, 1845, which provides that promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for a less sum than twenty shillings, are to be absolutely void and of no effect; not only so, the section proceeds to enact that any person who utters such a note or bill—and this would include a cheque, except one drawn by the customer of a bank for his own use—is rendered liable for every such "offence" to a fine not exceeding £20 nor less than £5, at the discretion of the justice of the peace who shall hear and determine such "offence." Being a practical people, Scotsmen have consistently ignored this penal provision—a counterpart of which we had at one time in England by virtue of the Act 48 Geo. 3, c. 88, and accordingly a cheque for a less sum than twenty shillings, payable to a person other than the drawer, is common in practice and no question is raised regarding its technical invalidity. Why retain such a futile provision on the statute book?

The "Âme Damnee" in Divorce.

LORD MERRIVALE is reported to have ordered an undefended divorce case, of the usual hotel-bill order, to stand out until the petitioner, in his Lordship's words, "put some reality into it." He also observed that the woman in the case "might be the respondent's grandmother or aunt for all I know." Perhaps the suggestion may be made that the President's requirement was, in the immortal words so familiar to GILBERT and SULLIVAN devotees, for "merely corroborative detail, calculated to give verisimilitude to a bald and unconvincing narrative." That corroborative detail will, no doubt, continue to be supplied by sophisticated husbands desiring divorce, who, when they stay at an hotel for the purpose, will not leave the apartment as they would expect to find it, and a bang with a fist in the middle of either pillow would be, in another immortal phrase, "elementary, my dear Watson." Such husbands will also supply a name if Divorce Court Judges wish it, and, in fact, anticipate their every desire, only so that the plum of the decree absolute may fall into the mouth watering in expectancy. The detached outsider, however, watching this drama, which his respect for the court would forbid him to designate a farce, may mildly wonder at its implications, and what imports the nomination of the lady. The Divorce Acts require decree to be pronounced in favour of an innocent wife on a husband's adultery, and whether the other woman is Miss A or Mrs. A Miss B or Mrs. B., or the guilty one's aunt or grandmother, so long as the fact is proved, is quite immaterial. One would indeed suppose that the man who roystered in this manner with his grandmother would aggravate his offence. Another matter for puzzle is the continuation of the Divorce Court practice of requiring the woman's name in the face of the judgments in the Court of Appeal in *Woolf* v. *Woolf* [1931] P. 134, especially that of ROMER, L.J. In *Woolf* v. *Woolf*, the evidence was of the usual kind on an hotel bill case, slightly fuller perhaps if anything, but the respondent obstinately refused to furnish the woman's name (on the strange ground that she was a respectable and honourable person) and MERRIVALE, P., refused the petitioner the decree. The Court of Appeal held he was wrong, and granted the decree, and ROMER, L.J., observed that he was at a loss to see what possible difference it would have made if the name had been disclosed. Perhaps the conclusion may be reached that the task of those required by law to discriminate between, in the words of HILL, J., "bogus adultery" and the real offence, is, in the present state of public opinion as to this kind of divorce, an impossible one.

Gifts by Wife to Husband.

IN A case at Clerkenwell, before Judge ROWLANDS, as to whether a sum of £50 handed by a wife to a husband was a loan or a gift, his honour observed that, whereas anything handed by a husband to a wife was presumed to be a gift, the reverse position was left obscure. There are, however, a considerable number of cases as to gifts or supposed gifts by wives to husbands. Thus, it is now clear that the doctrine of *Huguenin* v. *Baseley* (1807), 14 Ves. 273, does not apply to such gifts: see *Willis* v. *Barron* [1902] A.C. 271, and *Bank of Montreal* v. *Stuart* [1911] A.C. 120. If, therefore, there is proof of the intention of gift, the burden of impugning it by reason of the duress or undue influence of the husband is cast on those who seek to set it aside. On this point *Bischoff's Trustees* v. *Frank* (1903), 89 L.T. 188, may be regarded as overruled. In the absence of evidence of the intention of a gift there is authority that, if a wife hands money to a husband, he holds it on trust for her, see *Re Flamank* (1889), 40 C.D. 461, and *Re Blake* (1889), 60 L.T. 663. In the case before Judge ROWLANDS, the husband had made an observation to his wife as she handed him the money to the effect that she was not to press him for it. He denied this, but the judge found that it was true, and accordingly ruled that the transaction was a loan. In the course of the case his honour made various illustrations as to the intention to give, and suggested that the delivery of a set of golf clubs would clearly indicate a gift. Possibly a razor would be a better example, for a wife might consider herself entitled to use the clubs if she pleased. The need of delivery is shown by *Valier* v. *Wright & Bull* (1917), 33 T.L.R. 366, where the gift of a motor car by a husband to a wife was undoubtedly meant but failed, because it was kept on the husband's premises, and continued to be registered in his name. On the point of constructive delivery, this case appears somewhat difficult to reconcile with *Re Magnus* [1910] 2 K.B. 1049, in which furniture bought by the husband and placed in his house was held to be properly delivered to his wife or her trustee under a covenant to settle after-acquired furniture. From general usage and custom it may perhaps be held some day that money or chattels handed by a wife to a husband on his birthday or Christmas Day is *primâ facie* a gift.

Criminal Law and Practice.

ASSAULT WITHOUT BATTERY.—At the South-Western Police Court recently, Mr. W. J. H. Brodrick had to deal with two men who were concerned in something approaching a riot arising over an eviction in Battersea. One of the allegations against one of the men was that he threw a brick at a police inspector, which, fortunately, missed him. For this he was charged by the police with the offence of throwing a missile to the danger of other people, contrary to the Metropolitan Police Act, 1839. For this offence he was fined the maximum penalty of forty shillings.

The learned magistrate observed that if the brick had hit the officer it might have killed him. Had he the power to send the defendant to prison he would send him for six weeks. If there should be a recurrence of this kind of thing he would see that charges were so framed that offenders could be sent to prison, and to prison they would go.

Doubtless, the magistrate felt that it would be unbecoming for him, after hearing the evidence, to give instructions for a more serious charge to be preferred in order that he might exercise powers of greater severity. It is well, however, that police officers who have to prefer charges, and those who advise them, should not forget what was evidently present to Mr. Brodrick's mind, namely, that an assault is punishable as such, although not accompanied by actual battery. Assaults are so rarely without battery that this is sometimes forgotten. Etymologically, to assault is to assail (from the French "assailler"), though colloquially the former has a more forcible meaning than the latter. An assault is simply an attempt or offer to beat another, without touching him; it is not necessary to prove any actual suffering, so long as the attempt is proved and was not utterly impossible to carry out. In the case in question, the brick nearly hit the policeman, and upon a charge of assault the defendant might have been liable to six months' imprisonment.

NOTICE OF ALIBI.—Ohio is proud of its new "Alibi Defense" law. To judge by an article in "The Panel" (the organ of the Association of Grand Jurors of New York County), Ohio and other American States suffer from alibis. The disease is endemic.

A county prosecutor, proceeding against "Pittsburg Hymie" for the murder of "Roaring Bill Potter," said: "He is able to get an alibi for anything that he wants. So is every other member of the underworld."

Hymie certainly had friends to whom perjury was but a trifle. In *habeas corpus* proceedings in Pittsburgh some swore that on the night of the murder in Cleveland Hymie was in Pittsburgh. On his trial, others swore that on the same night he was in Akron. No court could believe that Hymie could be in two places at once, with the result that Hymie has ceased to be anywhere in the flesh at all.

However, Ohio now requires three days' notice of an alibi, and the law works well.

Notice of alibi is nothing new. It has been required in Scotland for many years: see s. 35 of the Summary Jurisdiction (Scotland) Act, 1908. Not only does this provision stem the flood of false alibis—it assists the accused who has a genuine one, for obviously an alibi which is produced after the other side has had an opportunity of testing it does not share the contempt attaching to alibis in general.

An alibi has, in the ordinary way, to be very solid to be successful. The best we have met was the accused's being in prison for one offence at the date of another wrongly charged against him. By the nature of things that kind of luck must be rare. But the alibi, unshaken after notice, is good enough for most people.

Mr. Gordon Cuming Whadcoat, of Sunningdale, solicitor, left estate of the gross value of £11,922, with net personalty £9,104.

The Statute of Westminster.

THE preamble to the Statute indicates that it is the outcome of the Imperial Conferences of 1926 and 1930, and to these may be added the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation of 1929. A short note on the scope and operation of the Statute will be found, *ante*, p. 801. The present purpose is to examine it in fuller detail.

In effect, it registers the practical change in the theory of our constitutional law as applied to the overseas Dominions which has gradually come about in the course of the last hundred years or so, and especially during the twentieth century. That change has often been compared to the ordinary one in a family, when the children by reason of growth become emancipated, and the comparison may be regarded as sufficiently apt. Our ancestors, enterprising and adventurous, travelled and traded all over the world, and, where the climate permitted, made permanent settlements. In their inception, these settlements required and were accorded the protection of armed force from England, and the colonists regarded themselves as Englishmen, and they and their land as subject to English, or, after the reign of QUEEN ELIZABETH, British law. So far as there was resistance to the colonising, and such resistance was subdued by our forces, there was also the right of conquest, and, as stated by Lord MANSFIELD in *Campbell* v. *Hall* (1774), 20 State Trials, col. 239 and cols. 322-3: "A country conquered by the British arms becomes a dominion of the King in right of his Crown, and therefore necessarily subject to the legislative power of the Parliament of Great Britain."

That has hitherto been the theory of our law. As stated in the Report of the Conference on the Operation of Dominion Legislation (p. 17), a theory existed, and was embodied in certain Colonial decisions, that legislation by a Colonial Legislature was void if repugnant to the law of England. This was found extremely inconvenient, for it involved a separation of the fundamental or immutable laws of England from those which were susceptible to change, without such separation ever having formally been made. To remedy such inconvenience, the Colonial Laws Validity Act, 1865, was passed, enacting that Colonial laws should have full force and effect, unless repugnant to an Act of Parliament expressly extended to any particular Colony.

Primâ facie, Acts of Parliament do not operate outside Great Britain or Northern Ireland, unless there are express words to widen their territorial scope. Given, however, the intention of legislating for the overseas possessions of the Crown, and express statement in an Act to that effect, Parliament has had full power to pass legislation affecting the whole British Empire. Conspicuously, of course, the Slavery Abolition Act, 1833, 3 & 4 Wm. IV, c. 73, "Slavery shall be and is hereby utterly and for ever abolished and declared unlawful throughout the British Colonies, Plantations, and Possessions abroad," related wholly to overseas possessions, for there was no need to apply it to the United Kingdom. Reference may also be made to s. 2 of the Foreign Enlistment Act, 1870, "This Act shall extend to all the dominions of her Majesty, including the adjacent territorial waters." The Fugitive Offenders' Act, 1881, likewise applies all over the Empire.

The tendency has, however, been for our Parliament to pass fewer and fewer such Acts, just as parents give fewer and fewer orders to their children as they grow up. In the end, adult children are not prepared to take orders at all, and parents have to recognise the fact. The Statute of Westminster, then, may be considered as a sort of charter of such recognition, so far as concerns the Dominions to which it expressly applies by s. 1, namely, Canada, Australia, New Zealand, South Africa, the Irish Free State, and Newfoundland. By s. 2, the Colonial Laws Validity Act, 1865, shall not apply to

future legislation in the Dominions, nor shall any future law of a Dominion Parliament be void because it is repugnant to the law of England. By s. 3, Dominion Parliaments have full power to make laws having extra-territorial operation, and, by s. 4, no Act by our own Parliament shall extend to a Dominion as part of its law, unless it is expressly declared by the Act that the Dominion has requested, and consented to, the enactment thereof. Section 5 removes the fetters on Dominion Legislatures imposed by ss. 735 and 736 of the Merchant Shipping Act, 1894, in respect of the power to alter that Act in its local operation, and s. 6 contains a similar provision in respect of the Colonial Court of Admiralty Act, 1890. Section 7 conserves the full effect of the British North America Acts, and s. 8 that of the Commonwealth of Australia Act and the Constitution Act of the Dominion of New Zealand. Section 9 deals with the internal relations of the Commonwealth and States of Australia, and by s. 10, sub-ss. (2) to (6) are not to apply to Australia, New Zealand or Newfoundland, unless their Legislatures adopt their provisions, such adoption being revocable. The Statute also contains such recitals of the agreement which it embodies as those with which a conveyancer might preface any private agreement.

The particular agreement embodied in the Statute, however, differs from ordinary private agreements inasmuch as there is no legal machinery to enforce it. The Statute is, in effect, a declaratory Act to limit the powers of our Parliament, but, if we have a fundamental law at all, it is that Parliament can in no way fetter or curtail its powers, and therefore can repeal the Statute and repudiate the limitations contained in it as and when it is pleased to do so. Indeed, on the rule that, where one Statute is inconsistent with another, the later prevails—see BRAMWELL, B., in *Bury* v. *Cherryholm* (1876), L.R. 1 Ex. D. 457, at p. 461—the operation of the Statute would defer to that of any later Act inconsistent with it, so far as it was not saved.

However, in the present state of our relations with the Dominions, the Statute is no more likely to be repealed than any Dominion is likely to repeal the Abolition of Slavery Act because it now possesses the power to do so. There are other possibilities, however, of British Acts being repealed or nullified by a Dominion Statute, and it is hardly possible to avoid reference to the Irish Free State Constitution Act, 1922, for it is on the "treaty" embodied in that Act that the chief controversy in respect of the Statute has arisen. It has been pointed out that the Government of Southern Ireland is now free to repeal and repudiate the whole of the treaty, and, in particular, may abolish the right, not expressed in the treaty, but implied by its reference to the position of Canada, of appeal to the Privy Council. The strong objection of certain parties in Southern Ireland to this right is of course notorious. The comment is of course open that, if the Government of Southern Ireland intend to be bound by the Treaty, it could or should have taken no offence if the treaty had explicitly been saved by the Statute. The question of the retention of this right of the individual subject throughout the whole British Empire was discussed a year ago in these columns (see 74 SOL. J., 720), special stress being placed on the right to appeal from a criminal conviction.

The Statute may in fact be regarded as purely disruptive in that it leaves no link of Empire, other than the formal allegiance to the Crown. If indeed the United States called its President the Governor-General, and slightly altered the frame of its enactments and some formal oaths of office, it could qualify as a Dominion without difficulty, and, with similar slight changes, so could any other nation.

Perhaps one may express regret that British statesmen in the Conferences appear to have laid no stress on the privileges appertaining to the "Community of Nations known as the British Empire." The inhabitants of that Empire now enjoy freedom as conceived, developed and enjoyed by the people of Great Britain, and that freedom has been, and largely still is, preserved to them by their inclusion within the Empire. But for the strong hand of Great Britain, certain European powers might, on some convenient pretext, have seized the lands of any of them, and the freedom of their populations would, to put the matter mildly, have been very definitely modified. On this view, the privilege should involve the reciprocal duty of continuing such freedom, but under the Statute does not do so. If the metaphor of the emancipated family may again be called in aid, a father might say to his grown-up son, "It is true that I cannot call upon you to obey me, but, if you are to continue as a member of the family and enjoy your heritage as such, there are certain gross offences to which no member of the family may stoop, and, if you commit any of them, you cannot remain within it." If a son answered, "It is an insult that you should suggest I am capable of committing such offences," the father might reply that, whether it was an insult to suggest that he, the father, was capable of murder or otherwise, he was quite content to be subject to a law forbidding him to commit murder, and punishing him for doing so. The Statute has, in fact, so far as it can have any operation at all, bound the British Parliament (although no one could possibly suppose that our Parliament would ever hereafter have purported to legislate for the Dominions without their consent) and left the others free. It emancipates, but asks for no high standard of justice and freedom in return. Thus any Dominion which may hereafter choose the Soviet system as its model of freedom is at full liberty to do so, provided the nominal allegiance to the Crown is retained. The comment may therefore be made that, as a British Constitution, the Statute omits the matters of the greatest value.

Ministry of Health Inquiries: The Surrey Case.

NONE of the Government Departments hold more public inquiries than the Ministry of Health. Their jurisdiction and functions are of the widest possible character, and touch almost every phase of the life of the community. It is therefore a matter of the first importance that their inquiries should be conducted with absolute fairness, that every interest should be duly heard and considered, and that the utmost regard should be had to all legal questions which may properly be raised.

We are led to these reflections by the proceedings in connexion with the recent public inquiry held by the Ministry of Health on the proposals of the County Council of Surrey for the alteration of districts and boundaries of districts in that county, under s. 46 of the Local Government Act of 1929. That inquiry lasted practically three weeks. It was attended by four eminent King's Counsel and a score or so of members of the Junior Bar, besides solicitors and other representatives of local authorities in the county. We hold no brief for Government Departments, but we consider that the Ministry in this case, and their inspectors, who conducted a most difficult inquiry, acted up to the standard above indicated.

Under s. 46 of the Act of 1929 the council of every county are required, as soon as may be after the commencement of the Act, "after conferences with representatives of the councils of the several districts" within the county, to review the circumstances of all such districts and consider whether it is desirable to effect any of various specified changes of boundaries and districts, and thereafter to send to the Minister a report of the review, together with proposals as to the changes they consider desirable.

The Surrey County Council, acting on this provision, made proposals of an extensive and far-reaching character for the alteration of most of the districts in the county. Those proposals would eliminate small and low-rated areas, and largely

increase the size and rateable value of other areas. At the commencement of the public inquiry held to consider the proposals the four learned King's Counsel raised and strenuously argued certain legal objections which, it was suggested, would invalidate the county council's scheme as a whole. It was urged that there had been no conferences, as required by the Act, within the true sense and meaning of the word, at which the local authorities concerned had had an opportunity of placing their views before the council's special committee, which had been entrusted with the task of reviewing the county; that in the absence of reasons being supplied by the county council for the proposed alterations their scheme was invalid; and that certain supplementary proposals relating to parishes and minor boundaries, included in an addendum to the special committee's recommendations, had not been formally adopted by the county council as required by the Local Government Act of 1888.

The Ministry of Health were evidently much perturbed by these legal objections. The inquiry, which was held by an engineering inspector, was nevertheless allowed to proceed, but at its concluding stage an experienced legal adviser of the department was associated with him for the purpose of hearing more fully the arguments on the objections.

The Ministry have not yet given their decision on the proposals of the council; but in an intermediate communication to the parties they have announced their conclusions as to the legal points involved. That communication seems to us to be based on a sound view of the law applicable, and also to be eminently reasonable. Referring to the contention that no real conferences were held, they say: "It is clear that, in enacting s. 46 of the Act of 1929 Parliament has left a great deal to the discretion of the county Councils on whom it has placed the responsibility of framing proposals; and it would in the Minister's view be straining language to suggest that meetings, to which all the parties concerned were invited, which they actually attended and at which discussions took place, were not conferences."

Serious objection had been taken at the inquiry to the effect that the attitude of the representatives of the county council was such as to limit unduly the scope of the discussion at the conferences and to prevent the full consideration of alternative proposals advanced by the district councils. As to this contention it is stated that "the Minister, on a careful consideration of the evidence, is satisfied that these allegations are not borne out by the evidence."

Referring to the objection based on the ground that the report and proposals of a county council must contain the reasons for the proposals, it is pointed out that s. 46 of the Act of 1929, under which the review was made, contains no express requirement that reasons shall be given. The submission of counsel was that such reasons were necessary according to the true interpretation of the Act, since, without having reasons before him, the Minister would not be competent to act. In the present case, however, the Minister states "it is not the fact that the report on the county review contained no reasons, but such statements as appeared were undoubtedly of a brief and general character." In conclusion on this objection it is stated, "the Minister is advised that the view that in this respect the requirements of s. 46 have not been complied with, cannot be accepted."

Lastly, as to the objection that the addendum to the council's report, relating to parishes and minor alterations, was not approved by the county council, this is upheld by the Minister, but he points out that the matter can be rectified by means of the submission to the department of supplementary proposals based on those comprised in the addendum.

The proceedings at this inquiry, and the Ministry's communication, above briefly summarised, give food for thought and, it may be, for comment. The county council, on the whole, and the Ministry of Health, so far, have not, however, acted otherwise than reasonably in the matter. As to the legal questions raised, the Ministry's views appear to be sound, and it may be doubted whether any of the interested parties will have the hardihood to test them in the courts. Had the legal objections been upheld, or were they to be upheld by the courts, the result would merely be that the proceedings relating to the county review and the local inquiry would all have to be repeated at heavy cost to the ratepayers of the county. Is it unfair, therefore, to ask in connexion with these objections, *Cui bono?*

Jurors for Our Lord the King.

THESE for present purposes are of two kinds only, Petty and Grand, for it is with Crown Courts that this article is concerned. There are, of course, Jurors too, who fill the box at *Nisi Prius* and consider questions of civil damages, but they are, so to speak, another story.

It has long been a point for debate whether the Grand Jury should be abolished, and during the period of the war it was in fact suspended.

To the surprise, probably, of many, the experiment was entirely successful, and no one was a penny the worse for their absence from court.

An interesting statement of the case for the permanent abolition of the Grand Jury at Quarter Sessions has been made by the Chairman of the County of London Sessions.

This is a reasoned argument of great weight, "Given," as it were, "at Our Sessions House of Newington, in such and such a year of Our Presidence."

Mr. WHITELEY is entitled to speak with authority, and as the County of London receives its cases, for the most part, upon the commitment of professional magistrates, it is probably correct to infer, as he does, that in only a small minority of cases can it be said that there was not sufficient evidence to justify a committal.

If and when cases are committed without sufficient evidence, there is, as is explained, abundant safeguard for the defendant, the risk to him or her is infinitesimal, and the inconvenience and expense of the Grand Jury is disproportionate to their utility.

In cases where committal is by amateurs there is, it is true, not the same degree of immunity from error, but the safeguard is the same, and Mr. WHITELEY'S argument is as strong.

It would be ungenerous to lay too much stress on what goes on and the mental processes revealed in the privacy of the Grand Jury Room.

Imagination, even without actual experience, would enable one to guess some of the difficulties of a body of men and women, the large majority of whom have never been in a criminal court before, and who have no knowledge of law or procedure.

An actual instance may be cited of a Grand Juror who insisted on supporting a bill of indictment, not because of evidence against the accused, but out of sympathy with the complainant.

This Juror felt and said that if the bill against the man in custody were thrown out, there would be no one left to shoot at.

If there was an injury to someone and someone else was available for punishment, it seemed to him to matter less about the justice of punishing that someone than about the injustice of being left without anyone to punish.

The point of view is one to make the blood of lawyers and thoughtful men run cold, but laymen cannot always detect the patent fallacy.

Mr. WHITELEY, then, would appear to have written to admirable purpose, but his monograph contains a curious reservation.

He would be inclined to retain a Grand Jury at Assizes and for a curious reason.

At Assizes the Grand Jury is composed mainly of a collection of those County Justices whose vagaries in their capacity of Justices are one of the possible causes of erroneous committals. It is to be doubted if, as a Court of Appeal from themselves or their kindred, they are likely to be able to correct their own or their brethren's errors.

But Mr. WHITELEY would perhaps retain them for another reason. He likes to give to His Majesty's Judges an opportunity from time to time of meeting and addressing the men and women of the county who are engaged in the administration of the criminal law.

It may be wondered if that is a justification for the retention of the Grand Jury.

It would rather appear to be a side use altogether of that body to employ them, as is sometimes done, perhaps more by Recorders than by Judges, as a vehicle for the expression of homilies at large, upon the activities of Parliament, the state of the roads, the variability of the English climate, or even the unpunctuality of local railway trains.

Grand Jury Service at Assizes is pleasant enough. It is an agreeable occasion of meeting, and the High Sheriff is hospitable, but such are not by themselves reasons for the retention of an institution which cannot be defended on more relevant grounds.

There is a delightful account by ADDISON in the *Spectator* of 20th July, 1711, of a country gentleman's attendance at Worcestershire Assizes, which comes irresistibly to mind in this connexion.

Sir ROGER DE COVERLEY was not summoned indeed as a Grand Juror, but seems to have been present for purely social reasons. He arrived late, but on getting into court took occasion to whisper in the judge's ear that he was glad his lordship had met with so much good Ear Weather in his circuit.

Later and in the midst of a trial he got up and made a speech, which, we are told, was little to the purpose and was apparently designed not so much to inform the court as to give him a figure in his friend's eye and keep up his credit in the county.

The effect of Sir ROGER'S oratory was what he had intended, for the ordinary people gazed upon him at a distance not a little admiring his courage, that was not afraid to speak to the judge.

Thus, then, in 1711 was the country gentleman's position in the county demonstrated, and thus to-day, if less blatantly, can amenities be observed, but possibly the same effect could be contrived (as Sir ROGER contrived it) without the necessity of summoning a Grand Jury for the purpose.

Petty Jurors are mentioned now, because it is important to remember that the vices of the others are the virtues of these. The usefulness of the Petty Jury is because of, not despite the fact that it is composed of a body of men and women, the large majority of whom have never been in a criminal court before and who have no knowledge of law or procedure.

This Jury are judges only of fact; theirs it is to decide whom to believe, theirs is the duty to bring to the questions before them the mind of the ordinary man and to convict only when reasonably satisfied by the Crown.

A Jury composed of experts would know too much and would not be fair, according to the concept of English criminal law. Experience seems to show that if sometimes a Jury lets off an accused person, whom the pundits outside the Jury box would have convicted, taken on the whole Juries through the ages have done and continue to do substantial justice between Our Sovereign Lord the King and the prisoner standing upon his deliverance.

Mr. JOHN E. SEAGER, solicitor, has been appointed Clerk to the West Sussex County Council to succeed Mr. S. Thorneley, retired. Mr. Seager, who has for some time been Deputy Clerk of the County Council, was admitted in 1909.

Company Law and Practice.

CVI.

RESIGNATION OF DIRECTORS—II.

LAST week we saw, from the case of *Latchford Premier Cinema Limited* v. *Ennion* [1931] 2 Ch. 409, that, though the articles of association of a company provided that the office of a director should *ipso facto* be vacated if by notice in writing to the company he resigned his office, an oral resignation given by a director at a general meeting of the company, and accepted at that meeting, was a valid and effectual resignation. This week I propose to deal with another recent case which touches on the question of the resignation of directors; it would seem rather a curious coincidence that there should be two such cases hard by one another, as nothing of the kind has apparently been litigated for about twenty-four years.

In *Fell* v. *Derby Leather Co. Limited* [1931] 2 Ch. 252, the defendant company was a company, the articles of which were mixed, that is to say, some of the articles of Table A of the Companies Act, 1862, applied to the company, while others were excluded, and articles specially adapted to the company's requirements were inserted in their place. One of these ran (so far as material) as follows: "The office of director shall be vacated . . . if he is requested in writing by his co-directors to resign." At the date which was material for the purposes of this action, namely the 4th September, 1930, there were only two directors of the defendant company, the plaintiff and W. On the above-mentioned date, W gave to the plaintiff a notice in writing, as his co-director, requesting him to resign the office of director of the defendant company; this notice purported to be given under the article above referred to.

Now at first sight it may well be said that it could not have been intended that where there were only two directors one should be able to sack the other; such a construction would certainly give a sharper edge to the old saying:—

"Thrice armed is he who has his quarrel just,
"Nine times is he who gets his blow in fust."

At any rate, in *Fell* v. *Derby Leather Co.* W did get his blow in fust, and it proved to be, at any rate so far as that action was concerned, the deciding blow, because BENNETT, J., held that the notice was operative, and that on the day of service the plaintiff ceased to be a director of the company. The position of any director in a company where there are articles of this nature, and only two directors, must be considered, in view of this decision, to be somewhat precarious, and there seems to be little logic in saying that the first director to give the notice can get rid of his fellow director; in a case where there are more than two directors, however, there seems to be commonsense behind the giving of a power to all the directors (other than one) to dispense with the services of that one. Be that as it may, we have to deal with the construction of the articles, and not to find out what the articles were intended to mean, and then distort the words used to fit in with that intention.

In *Fell's Case*, the plaintiff contended that the material article, when it referred to "co-directors" did not refer to a sole co-director, but the defence contended, firstly, that Table A of 1862 was part of a statute and that therefore, by virtue of the Interpretation Act, 1889, s. 1 (1), words therein in the plural included the singular in the absence of a contrary intention; secondly, that the Interpretation Act must also apply to the other articles of the company, because it would be confusing that two different principles of interpretation should apply to a document which, though made up of elements from two different sources, was essentially one document; and thirdly, that there was no contrary intention within the meaning of the statute. The defendants also are reported as having argued that it is in accordance with commonsense that, where there are only two directors, one director should ask the other to resign; and here a humble scribe may perhaps

be permitted to remark that his view of commonsense does not accord with that argument, which seems to be nothing but a travesty of commonsense. But again, commonsense seems to be beside the point; it is the construction of the articles which concerns us, and BENNETT, J., held that the Interpretation Act did apply, both to Table A and to the special articles used therewith, and that there was therein no contrary intention. Accordingly, the notice was valid to terminate the plaintiff's tenure of office, and the action failed.

This action was one the actual decision in which is not, when considered in relation to the particular facts of the case, of particular importance in that similar facts might not arise again, but it is nevertheless one which is not without some general significance, in that probably the great majority of companies which are in existence at the present time are governed by articles consisting of one of the various Tables A, together with other articles of a special nature, and it may now be said, with all the authority of a reported case on the point, that the construction of every part of such articles is governed by the Interpretation Act, 1889.

(*To be continued.*)

A Conveyancer's Diary.

Intestates' Estates and the Statutes of Limitation.

In another column of this issue there appears a letter from Mr. Ernest I. Watson raising a point which he thinks is worthy to be dealt with by me.

I welcome Mr. Watson's letter. He has had more experience than most of us can pretend to, and I have always found his letters addressed to the editor of this journal to be of interest.

The point which Mr. Watson raises is this: By s. 13 of the Law of Property Act Amendment Act, 1860, it is provided that the right to recover a share of the personal estate of an intestate shall be barred after twenty years from the date when the right to receive the same shall have accrued to a person capable of giving a receipt for the same, or from the date when any acknowledgment of payment on account shall have been given or made. The Law of Property Act Amendment Act, 1860, was repealed by s. 10 (and 10th Sched.) of the L.P.A. (Amend.) A., 1924, except as to sections with which we are not, for the present purpose, concerned. Section 13 of the Act is certainly repealed.

Mr. Watson then asks what is the position of a claimant to a share in an intestate's estate? Section 13 of the Law of Property Act Amendment Act, 1860, being repealed, is such a claimant given an unlimited time in which to recover, and what, if any, difference does it make whether the intestate died before or after the commencement of the L.P.A., 1925, when the L.P.A., 1924, came into force?

I think that it is necessary to look back a little and to consider the effect of an earlier statute before deciding what the result of the repeal of the Law of Property Act Amendment Act, 1860, may prove to be.

By s. 25 (2) of the Judicature Act, 1873, it is enacted that—

> "No claim of a *cestui que* trust against his trustee for any property held on an express trust, or in respect of any breach of any such trust, shall be held to be barred by any statute of limitations."

The question of what is, or is not, an express trust has been the subject of discussion and decision in many cases. I do not think that it is necessary to consider that question except as it arises under statute, and, although there has been no decision, so far as I know, on the precise point raised by Mr. Watson, there is an analogous case to which reference may be made.

In *Toates* v. *Toates* [1926] 2 Ch. 30, the facts were that the plaintiff was the heir-at-law of one William Toates, who died intestate in 1913, and letters of administration of his estate were granted to his widow, who took possession of land which was the subject of the action. The administratrix died in 1923 having devised all her real estate to the defendant, who then took possession. In 1925 the plaintiff took out letters of administration *de bonis non* of his father's estate, and in the same year commenced proceedings against the defendant in the county court claiming possession and mesne profits.

In the county court judgment was given for the defendant who relied upon the Real Property Limitation Act, 1874, as a bar to the action.

On appeal the decision was reversed on the ground that the administratrix of William Toates was an express trustee of the land, and not as the county court judge had held, a constructive trustee.

The decision was based upon s. 1 (1) of the Land Transfer Act, 1897, which it will be remembered provides that real estate shall devolve to and become vested in the personal representatives of an intestate as though it was a chattel real, and on s. 2 (1) of the same Act, which enacts that the personal representatives "shall hold the real estate as trustees for the persons by law beneficially entitled thereto and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate."

The appeal was heard by Warrington and Atkin, L.JJ., sitting as a divisional court. In the course of his judgment, Warrington, L.J., referred to the definition of an express trust given by Lord Cairns in *Cunningham* v. *Ford* (1878), 2 App. Cas. 974, 984. Lord Cairns said that an express trust was "a trust which arises upon the construction of a written instrument not upon any inference of law imposing a trust upon the conscience, a trust arising upon the words of the instrument itself." Applying that definition, Warrington, L.J., came to the conclusion that by virtue of the Land Transfer Act a personal representative of a deceased person became an express trustee of the real estate which devolved upon him under that Act. His lordship said, "the Act was not content with merely providing that real estate should vest in the personal representative as if it were a chattel real. It also declared the purposes of such vesting and particularly in s. 2 sub-s. (1) that, subject to the powers previously declared, the personal representatives should hold as trustees for the persons in law beneficially entitled thereto." The result was that the administratrix being an express trustee, the period prescribed by the Law of Property Act, 1874, did not run in her favour or in favour of the defendant, who claimed as a devisee from her.

Turning now to the A.E.A., 1925, it will be seen that both the real and the personal estate of an intestate are, as regards persons who die after 1925, held upon an express trust. Section 46 (1) of that Act enacts that: "The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely—" then follow provisions, all of which (except that regarding personal chattels and the charge of £1,000 in favour of a surviving husband or wife) expressly declare trusts of the residuary estate.

It follows, applying the principle of the decision in *Toates* v. *Toates*, that the residuary estate of an intestate dying after 1925, is held upon an express trust and consequently the Statutes of Limitation do not apply.

That I think is the answer to Mr. Watson's question so far as regards the estates of intestates who died after 1925.

With regard to the position where an intestate died within twenty years before 1926, I think that the repeal of s. 13 of the Law of Property Act Amendment Act, 1860, has deprived the personal representatives of the protection afforded by that Act, and so such personal representatives are, in this respect, in the like case with those of intestates dying after 1925.

Of course, in every case s. 8 of the Trustee Act, 1888, may be pleaded in bar, but it will be remembered that that section does not protect a trustee "where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee or previously received by the trustee and converted to his use."

Landlord and Tenant Notebook.

Implied Restrictions on User.

The most important implied restriction on user is that by which a landlord is prevented from derogating from his grant. This restriction is implied by law; but in some cases rights may be founded on the terms of the agreement and may extend beyond what those terms actually express, and tenants may be able to restrain landlords from using adjoining premises, and landlords able to restrain tenants from using the demised premises, for objects in conflict with those for which the grant was made. That object must, of course, be sought in the terms of the agreement; but a perusal of decided cases suggests that apart from covenants or even the description of the premises in the parcels, the nature of the property itself has often been a consideration present in the mind of the court.

Though the facts were unusual, the case of *Leader* v. *Moody* (1875), L.R. 20 Eq. 145, is an instructive one, the principle being laid down by Jessel, M.R., in no uncertain language. The plaintiff was sub-tenant of some pit-stalls and boxes at His Majesty's Theatre, under leases which gave him free admission to any public performance or exhibition of opera or entertainment, except balls and masquerades, in "the usual manner of subscription tickets." The lessee was under covenant to the ground landlords (the Crown) not to convert the building to any other use than the acting and performing of operas, plays, concerts, etc., etc. The theatre had been burnt down, but had been almost re-built, and the site of plaintiff's boxes and stalls agreed, when the lessee agreed to let the building for three months to the defendants Moody and Sankey, the revivalists. For the purpose of their meetings the pit was boarded over and the partitions between boxes removed, and the plaintiff then sought an injunction to restrain this and the demise for the purpose of preaching and singing hymns. This was refused because of the temporary nature of the demise, and only one shilling damages was awarded; but the judgment of Jessel, M.R., makes it quite clear that the absence of express restrictions in the sub-lease did not prevent the court from considering its meaning and effect: "It surely never could be contended that the man who had taken money for boxes and stalls in a theatre could the day after destroy the theatre and turn it, for example, into a stable if he got a licence from the superior landlord." The defendant lessor "represents that he has a lease of a theatre containing covenants that it shall not be used for any other purpose." The sub-demise "really meant that the stalls and boxes were sub-demised for theatrical purposes."

In *Kehoe* v. *Lansdowne* [1893] A.C. 451, the facts were again unusual, but the application of the principle clear. A document in the nature of an agreement commenced with a statement that the landlord was minded and desirous to provide a suitable residence and holding for the Roman Catholic officiating clergyman at ——, and for that purpose to grant and let, etc. The proceedings were taken to restrain the erection of huts on and the occupation of the holding by evicted tenants from other parts of the estate. There was, in fact, no actual relation of landlord and tenant between the officiating clergyman and the plaintiff (the grant having been made to the bishop, since deceased), but it was held that the land was clearly held on the terms of the agreement, that as a matter of contract it was to be used only for specified purposes, and the erection of the huts was evidence of the breach complained of.

The events which led to the proceedings in *Hudson* v. *Cripps* [1896] 1 Ch. 265, are of greater interest from the point of view of everyday practice, the plaintiff having vindicated the rights of dwellers in mansion flats, an ever-increasing section of the community. Her agreement, a printed document in common form, was one-sided as regards covenants; it obliged her not to use the premises otherwise than as dwelling-rooms, not to annoy the landlord or the other tenants, to observe a number of regulations (affecting the lift, the porters, etc.). What she complained of was the intended conversion of the rest of the building into a club-house; and the court held that as the agreement on the face of it related to a certain flat forming part of a large building, and as the building was in fact a collection of flats, an injunction should issue.

The limits of this doctrine can be seen from *Holford* v. *Acton Urban Council* [1898] 2 Ch. 240, though it was not a case between landlord and tenant. The plaintiff had bought one of many plots of land described as "adapted for first-class shops and business premises requiring roomy premises," and each purchaser was required to covenant to erect a shop and dwelling-house. Such a covenant in fact appeared in the plaintiff's conveyance. The vendors, not having succeeded in selling some of the other lots, proceeded to build a fire-station on the site. It was argued that a negative stipulation (which would bring *Tulk* v. *Moxhay* into play) was implied, and that there had been a "representation" that the adjoining plots would be used for business premises; but the court refused to imply restrictions which could not be said to have been fairly contemplated by the contract and without which it could well be performed. At the most there was never anything which could have prevented the conversion of business premises once erected.

Mention may also be made of *O'Cedar Ltd.* v. *Slough Trading Co.* [1927] 2 K.B. 123, in which it was contended that a restriction on user should be implied as a "correlative obligation." The obligation on the tenants, the plaintiffs, was not to do anything which would increase insurance premiums (which were payable by the lessors, but added to the rent), and the complaint was that the defendants had themselves brought this about by letting adjoining premises as a wood-working factory. The court refused to recognise any such implication.

In a Rent Act case, *Williams* v. *Perry* [1924] 1 K.B. 936, the landlord was able to rely on a verbal agreement, and a verbal statement by the tenant that he wanted the premises for business purposes, to support his contention that they were decontrolled, although the tenant had since converted them into dwellings.

Our County Court Letter.

IMPORTANCE OF "ACTUAL OCCUPATION."

(*Continued from* 75 Sol. J. 652.)

II.

The requirements of the Rent, etc., Restrictions Act, 1923, s. 2 (1), were considered in the recent case of *Bradberry* v. *Summers* at Birmingham County Court. Possession was claimed on the grounds that notice to quit had been served, and that the house was decontrolled, as (*a*) prior to the defendant's occupation it had been vacant for a week while it was in the hands of the decorators; (*b*) the rent paid by the defendant was greater than that paid by his predecessor, and had been fixed on the basis of decontrol. The defendant nevertheless contended that (1) the decorations had been carried out under his supervision; (2) he had paid rent for the week during which the house was vacant; (3) he intended to

reclaim all overpayments of rent which were not statute-barred under the Rent, etc., Acts. It was pointed out for the plaintiff that the defendant was a member of a tenants' association, and, if he was in fact entitled to the protection of the Acts, his rights would have been long since enforced. His Honour Judge Ruegg, K.C., remarked that the case illustrated the need for care in investigating the question of decontrol, as the fact that there was an interval of time (during which no one was in occupation) did not necessarily remove the house from the protection of the Acts. In the above case the plaintiff *primâ facie* had had possession, but it transpired that he had actually not lost a day's rent. The house had therefore not been decontrolled, and judgment was given for the defendant, with costs. The leading case on "actual," as opposed to "notional," possession is *Hall* v. *Rogers* (1925), 133 L.T. 44.

THE VALIDITY OF ADVERTISING CONTRACTS.

(*Continued from* 75 SOL. J. 419.)

II.

IN *Joseph Moss & Co.* v. *Cockayne*, recently heard at Westminster County Court, the claim was for £13 16s. in respect of a year's advertisement on a film at a cinema theatre in Walsall. The defendant admitted liability for a month's advertisement (and had paid into court the value thereof), but denied further liability. His wife gave evidence that the plaintiffs' representative had asked her to sign a paper, certifying that he had called in reference to a film advertisement, and she had accordingly signed—without reading the document. The defendant had at once cancelled the order, on discovering that it extended over twelve months, and His Honour Judge Turner held that the wife had no authority to give such an order. Judgment was therefore given for the defendant with costs.

THE RIGHTS AND LIABILITIES OF MUSICIANS.

IN *West Bromwich Borough Prize Band* v. *Lilleshall Hall Estates Limited*, recently heard at West Bromwich County Court, the claim was for £15 for breach of contract. The plaintiffs had been engaged to perform on two Sundays, at a fee of £10 on each occasion, but, after the first concert, the defendants purported to cancel the second on account of trade depression. The plaintiffs had therefore forfeited £5, which they had deposited with a garage proprietor to ensure that transport would be available, and had also failed to secure another engagement. The matter had been compromised by the acceptance of £5 for the second date, but the defendants had paid neither this sum nor the fee for the first concert. His Honour Judge Tebbs observed that trade depression did not justify a breach of contract, and judgment was therefore given for the plaintiffs, with costs. Compare *Thomas* v. *Todd* [1926] 2 K.B. 511.

Practice Notes.

CHANCERY CAUSE LIST.

As from the 21st December, 1931, three lists will be kept (I) of adjourned summonses and non-witness actions; (II) of witness actions Part I (the trial of which cannot reasonably be expected to exceed ten hours); and (III) of witness actions Part II, instead of six lists as heretofore, every proceeding being entered in these lists without distinction as to the judge to whom the proceeding is assigned. During each sittings there will usually be two judges taking each of these lists, and, as heretofore, warning will be given of proceedings next to be heard before each judge. Applications in regard to a "warned" matter should be made to the judge before whom it is "warned." Applications in regard to a proceeding which has not been "warned" should usually be made to the senior of the two judges taking the list in which the proceeding stands.

No alteration will be made in the existing practice as to motions, short causes, petitions and further considerations, which will usually be taken by that one of the judges taking the non-witness list who belongs to the group to which the proceeding is assigned.

No alteration will be made in the existing practice as to matters proceeding in the Liverpool and Manchester District Registries or Companies (Winding up) or Bankruptcy matters.

Correspondence.

Recovery of Water Rates, Gas and Electricity Charges.

Sir,—We have read with interest the article in your journal of the 21st inst., at p. 787, on this subject.

We observe that the author of the article did not deal with what, we suggest, is a subject of considerable interest to trustees, liquidators, and solicitors who have to advise them from time to time; regarding their position, when they find upon appointment that the charges in respect of gas, electricity and water rate are in arrear—and they wish to continue the business carried on upon the debtors' or company's premises—as the case may be. There are numerous authorities on the subject, which we feel sure will be of interest to your readers, so perhaps, when the author has the opportunity he may supplement his article with further information on the subject, and (*inter alia*) deal with the position of a trustee under a deed of arrangement for the benefit of creditors.

London, W.C.1. SYRETT & SONS.
26th November.

[We are much obliged to our correspondents for their suggestion and hope to publish a further article on the point raised in a later issue.—ED., *Sol. J.*]

"A Conveyancer's Diary."

Sir,—Here is, I think, a point worthy to be dealt with in the "Conveyancer's Diary."

Section 13 of the Law of Property Act Amendment Act, 1860, limited the right of action for recovery of share of intestate's estate to twenty years. This was repealed by Law of Property Amendment Act, 1924. (Incidentally it is printed in "Chitty's Everyday Statutes" without a note of its repeal.)

What is the position with regard to a claim against an intestate estate where deceased died within twenty years before 1926, and what will be the position with regard to estates of intestates dying after 1925?

Norwich. ERNEST I. WATSON.
18th November.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Vendor and Purchaser—Specific Performance.

Q. 2351. A verbally agrees with B to sell him a house, and B pays A a deposit for which A gives a receipt as follows: "Received of B £50 deposit on the sale of leasehold house No. 10 North Street at £500 completion in about a month" and signs it. B can, presumably, on the cases decided, get specific performance against A. As a matter of fact, B would be glad not to go on with the matter. Can he do this, and can he get his deposit back? Is there a case on the point?

A. No. B cannot recover the deposit if A is able and willing to complete; or unless there has been some misrepresentation or improper concealment, such as of the existence of some unusual covenants in the lease which were not disclosed; see *Re White and Smith's Contract* [1901] 2 Ch. 666. B is also not bound to take the property if held by underlease: *Re Beyfus and Master's Contract* (1888), 39 Ch. D. 110.

Costs of Writ of Possession.

Q. 2352. A building society, as mortgagees of certain freehold property in respect of which the subscriptions are in arrear, issue a writ for possession. No appearance to the writ is entered and the society take judgment and issue a writ for possession. This is sent to the sheriff. The sheriff's officer apparently sends a man to the house occupied by the defendant and in respect of which possession is claimed and, without the plaintiff's knowledge or consent, arranges with the man to give possession in ten days' time. At the expiration of that time the sheriff's officer delivers the key to the plaintiff's solicitors and asks for payment of his account, as follows:—

	£	s.	d.
Poundage on annual value, say £25	1	5	0
Fee for delivering possession	1	1	0
Mileage	1	0	0
Man's time, three days	1	5	6

The question is asked whether the sheriff is entitled to these fees, particularly the three days' possession fees. The sheriff's officer's office is twenty miles from the house of which possession is sought. Apparently the sheriff's officer sends his man to interview the defendant, and he informs the defendant that he has a writ of possession and advises the defendant to give up possession without the necessity of having to remove the goods. The defendant arranges to go on a certain date, and on this date the bailiff attends to receive the key. All this is done without any consent by the plaintiff. Is the sheriff's officer entitled to any fee for possession unless his man has in fact lived in possession for a day or part of a day? No costs are allowed in these cases, and if the plaintiffs are saddled with these expenses it does seem rather unreasonable.

A. The writ in specific terms commands the sheriff "without delay" to cause the plaintiff to have possession, but it was held by Lord Denman, C.J., in *Mason* v. *Paynter* (1841), 1 Q.B. at p. 981, that the sheriff has a reasonable time in which to execute every writ. If the plaintiff requires prompt execution, however, he can require the sheriff to attend in order to be shown the premises, and if the plaintiff makes no such appointment he cannot complain of a slight delay: see *Mason* v. *Paynter*, *supra*. The statement that no costs are allowed in these cases discloses a practice which is inconsistent with (*a*) the *Dartford Brewery Co., Ltd.* v. *Moseley* [1906] 1 K.B. 462, and (*b*) the Judicature Act, 1925, s. 50. Under Ord. 47, r. 3, an order for the costs on the writ of possession can be made by a master in chambers. The sheriff is entitled to the above fees charged, except the three days' possession fees, which are only chargeable under a writ of *fi. fa.* A master or district registrar can only tax the sheriff's fees under a writ of *fi. fa.*, and the sheriff must therefore sue for the fees under any other writ which he may be desirous of charging against the plaintiff's wishes.

Will—Election.

Q. 2353. A died in December, 1924, having by her will devised all her real property unto her trustees therein named, upon trust to receive the rents, profits and income arising therefrom and after paying thereout the cost of repairing, painting and insuring her said real property and all rates, taxes, etc., to pay the residue of the said rents, profits and income to her husband B, during his life and after his death the testatrix devised two specific dwelling-houses and premises to the use of her son C in fee simple subject to him conveying a certain house and premises and a piece of land adjoining thereto, then belonging to C in fee simple, to the use of her daughter D, in fee simple, to whom she devised the same subject to certain rights of way. B, the husband of the testatrix, is still living and recently the son C died intestate. The property devised to C is still held in trust by the trustees of A. C did not convey his own house and premises to D, in fact I cannot see how he could have done so until the death of B. I am taking out letters of administration to the estate of C, and I presume the property devised by A to C must not be included in the Inland Revenue Affidavit, as it did not belong to C at the time of his death, but that his own property which he was to convey to D must be included. I shall be glad if you can kindly inform me what the position now is with respect to the devise to C and the condition attached thereto, and the course to take with respect thereto and when.

A. This would appear to be a case where C (or rather his representatives) must elect for or against the will of A, and for the purposes of this reply it is assumed that there was no election by C, by conduct or otherwise, during his life. If election is now made in favour of the will it would appear that the value of the rights passing on the death of C would be the value of his reversionary interests in the two dwelling-houses passing under A's will less the value (as indicated below) of the house, etc., belonging to him to be conveyed to D on the death of B. The value of this latter to be deducted would be the value of a reversionary interest therein expectant on the death of B, the value of the property for the period of the life of B forming part of C's estate. If, however, election is now made against the will of A, then the value of the rights passing on the death of C would be as follows: The value of his own house, etc., plus such an amount of the value of the reversionary interest in the two houses, which (but for his election) he would have taken under the will of A, as will leave for D out of the value of that reversionary interest a value or amount equal to the value of C's own house, etc., and this on the principle of compensation. We do not agree that it was impossible for C to have given practical effect to an election against the will during the life of B, as the necessary equitable expectant interest could have been transferred to D.

Reviews.

Palmer's Company Precedents for Use in relation to Companies subject to the Companies Act, 1929. Part I, General Forms. With Notes and an Appendix containing Acts and Rules. Fourteenth Edition by ALFRED F. TOPHAM, K.C., LL.M., ALFRED R. TAYLOUR, M.A., Barrister-at-Law, and A. M. R. TOPHAM, Barrister-at-Law. 1931. Medium 8vo. pp. clv. and (with Index) 1640. London: Stevens & Sons, Ltd. £3 13s. 6d. net.

The first volume of Mr. Topham's eagerly awaited trilogy is now available, and a perusal of it, or even a casual glance, will at once provide an explanation of its somewhat belated appearance. However, this delay can only have whetted the appetite of the company lawyer for this indispensable book of precedents, and he will certainly find generous fare provided for him between its covers. One of the very real difficulties which faces an editor of a book of this kind is the difficulty of keeping the book within reasonable limits, a task which has not been made any easier by recent legislation, but the editors have here been very successful, and this book contains fewer pages than did the same volume of the previous edition. In particular the index has been compressed, and, though this might be considered to be risking to some extent the practical utility of the volume, in that time may be wasted in searching for a reference, it seems to be equal to most reasonable demands on it, and this perhaps can be better realised when it is said that, even in its shortened form, the index still comprises some 170 pages.

In a book of this nature possessing the high and well-earned reputation that it does, there is little that can be the subject of criticism, if that word be used in its narrow sense of finding fault. Nevertheless there are certain directions in which the editors might have provided more assistance for the user of the book. To take an example, the Companies Act, 1929, provides, by s. 46, that a company may, under certain conditions, issue redeemable preference shares. The only reference in the index to redeemable preference shares is to the page where s. 46 of the Act is printed *in extenso*, without any notes thereto. On p. 593 is given a form of article giving the company a power to issue redeemable preference shares, though not such a wide power as that conferred by the Act, and on p. 631 is a form of article giving the company power to reduce any capital redemption reserve fund. On neither of these two pages is there any note referring to this new type of share, nor, so far as the present writer is able to discover, is there in the book any form, either of article or of resolution, which would enable the practitioner who had a concrete case of a contemplated issue of redeemable preference shares to translate it into a matter of practical politics.

The issue of shares at a discount authorised by s. 47 of the Companies Act, 1929, is also treated somewhat sketchily, and there appears to be no form to assist one in drafting a petition for the sanction of the court to any such issue, or the evidence in support. The table of corresponding clauses of Table A of 1908 and Table A of 1929 contains one or two minor inaccuracies.

There can, however, be no doubt but that this book is one of very great assistance to the company lawyer, and indeed, one which it is almost impossible for him to do without, except at the risk of grave inconvenience, if nothing more.

What Price Jury Trials? By IRVIN STALMEISTER. Boston, Mass.: The Stratford Company. $2.

Mr. Stalmeister's answer seems to be that they are worth less than nothing. The American jury, so his wrapper declares, "is based almost entirely upon chance, speculation and dramatics."

This really seems to be the fact, and here we follow not only Mr. Stalmeister's vivid indictment, but many others equally well informed, if less emphatic.

It is melancholy that a fine institution should have been so worked as to "produce verdicts as a result of passion, prejudice, misinformation and showmanship." But America's best friends have to admit that police and justice are very weak spots in her system. Ultimately it is largely due to the intrusion of politics into fields where they are out of place. The direct election of judges is democracy run mad. The enlarging of the jury's functions to include those of the judge; challenge carried to the elimination of the intelligent among the jurors; frantic license allowed to advocates; obsolete law; and other obstructions to the course of justice, have all worked together to make most American courts, save perhaps the highest, a mock. Not only the jury is discredited; the whole administration of justice suffers. The decline of the jury is, after all, only a symptom; those who desire to study it can have no better fever chart than this volume.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Sir James Allen Park died on the 8th December, 1838. In 1816 he was appointed a Justice of the Common Pleas, in which office he proved a sound and reliable judge, displaying a special aptitude and felicity in the art of summing up difficult cases. Nevertheless, he was "a lawyer of the old school with prejudices of the oldest," and in force of personality he was no match for some of the blustering leaders of his time. Among his strongest antipathies were port and "Papists"—the former rather remarkable in a judge of that generation. He was naturally a great stickler for etiquette, and his criticism spared no eccentricity whether in a barrister's wig or a sheriff's waistcoat or a witness's whiskers—"hairy appendages" he called them. He was a deeply religious and very charitable man, and the winter of his death the hundred poor persons whom he used to relieve twice a week must have missed him sorely.

THE NECESSARY "CAT."

The "Cat" as an instrument of punishment has recently received a blessing from two very different quarters—from Mr. Justice Wright on the Bench at the Glamorgan Assizes and from Dr. Downey, Archbishop of Liverpool, if not exactly *ex cathedra*, at any rate, *ex æthere* through the B.B.C. Dr. Downey's opinion has all the more weight in that he officiates in the city where Mr. Justice Day's heavy flogging sentences did much to extinguish the gangs of hooligans which terrorised Liverpool in the eighties. This judge's manner in passing such sentences was highly unusual: "I shall not sentence you to a long term of imprisonment," he would begin in a low voice, and if the prisoner was inexperienced he would begin to feel happy; "I consider yours is a case in which public money would be expended to no good purpose, so I shall not send you to penal servitude." By this time the prisoner's joy would be full. "But I shall sentence you to twelves months' hard labour with twenty-five strokes of the cat when you go in and another twenty-five when you come out." Collapse of the ruffian in the dock and a final admonition from the Bench: "Show your back to your dissolute friends when you come out."

A TENSE MOMENT.

It is rarely that a judge in passing sentence has any personal reason to regret his duty as had Mr. Justice Humphreys recently, when a solicitor whom he had known in practice was convicted before him at the Old Bailey. Never in modern times can the relations of judge and prisoner have created so tragic a situation as the astonishing climax of the Seddon trial, when Mr. Justice Bucknill, himself a Mason, was reduced to tears in passing sentence of death on a member of the same brotherhood. After the verdict was announced, Seddon, with hand uplifted

to take the Masonic oath, had solemnly sworn that he was innocent of the murder. Then the judge, almost sobbing, began his final admonition, in the course of which he told him: "From what you have said, you and I know we both belong to one brotherhood, and it is all the more painful to me to have to say what I am saying. But our brotherhood does not encourage crime; on the contrary it condemns it; I pray you again to make your peace with the Great Architect of the Universe." Of the two men the prisoner seemed the less perturbed.

Notes of Cases.

House of Lords.

Crook *v.* Seaham Harbour Dock Co.

24th November.

INCOME TAX—DOCKS—EXTENSION—GRANT BY UNEMPLOYMENT GRANTS COMMITTEE—REVENUE OR CAPITAL—TRADE RECEIPTS—INCOME TAX ACT, 1918, Sched. D, Case I.

This was an appeal from the Court of Appeal reversing a decision of Rowlatt, J.

The question was whether in arriving at the balance of profits and gains of the trade of the respondents as dock owners a grant of money to the respondents by the Unemployment Grants Committee in order to assist them in carrying through the work of extending the docks should be included as trade receipts on revenue account. In 1923 the respondents began to extend their docks at Seaham Harbour, the estimated cost of which was £150,000, and they were authorised by statute to raise £75,000 on the security of £75,000 debenture stock. In September, 1923, the respondents wrote to the Unemployment Grants Committee for financial assistance to enable them to carry through the extension. To which the committee replied that they were "prepared to sanction a grant equivalent to half the interest at a rate not exceeding an average up to 5½ per cent. on approved expenditure met out of loans, for a period of two years." Grants were made from time to time on that letter, and in the respondent's accounts the grants so made had always been credited to revenue. The respondents were assessed to income tax in respect of their trade as dock owners, and for the purpose of the computation of profits the grants received from the committee were included as trade receipts on revenue account. Those assessments were upheld by the General Commissioners and their decision was affirmed by Rowlatt, J., The Court of Appeal reversed Rowlatt, J., on the ground that the money was paid on capital account and was not liable to income tax. The Crown now appealed.

The HOUSE without calling on counsel for the respondents dismissed the appeal.

Lord BUCKMASTER, in giving judgment, said it was now sought in the assessment to income tax made against the respondents to include these moneys as profits of the respondent's trade. The question could not be put better than it had been put by Mr. Hills: Was this a trade receipt? The answer was unhesitatingly, No. The government grant had for its object the relief of unemployment and was made simply to enable the company to carry on the work which they were carrying on with the idea that by that means more men would be employed. In those circumstances it was clear that the moneys could not be included as money liable to income tax.

Lords WARRINGTON OF CLYFFE, ATKIN, TOMLIN and MACMILLAN agreed.

COUNSEL: *The Solicitor-General* (Sir T. Inskip, K.C.), and *R. Hills* (with them the *Attorney-General*, Sir W. Jowitt, K.C.); *Tyldesley Jones*, K.C., *A. M. Latter*, K.C., and *Cyril King*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Borough Court Estate.

Maugham, J. 19th November.

IMPROVEMENTS—SETTLED LAND ACTS, 1882 TO 1890—TENANT FOR LIFE—APPLICATION FOR RECOUPMENT—DELAY—SETTLED LAND ACT, 1925, ss. 84 and 87.

In this summons the tenant for life of certain settled property comprising a mansion house and land asked that the trustees of the settlement should be directed in accordance with s. 87 of the Settled Land Act, 1925, to pay to him out of the capital moneys comprised in the settlement the expenses incurred by him in 1920 in executing certain improvements, some authorised by the Settled Land Acts, 1882 to 1890, and the rest subsequently coming under the Settled Land Act, 1925. He had submitted no scheme for approval as required by the Settled Land Act, 1882. In 1923, he sold the greater part of the land and in 1929 the remainder of the property.

MAUGHAM, J., in giving judgment, said that although part of the expenditure in question was incurred before the Settled Land Act, 1925, in respect of improvements not authorised until that Act, the court had power to order repayment of sums so expended: *In re Lord Sherborne's Settled Estate* [1929] 1 Ch. 345. Moreover, although the property in question no longer formed part of the settled estate, the provisions of ss. 84 and 87 of the Settled Land Act, 1925, showed that it would be contrary to the policy of the Act to hold that the jurisdiction of the court to order repayment ceased when the land was sold. In considering whether the court should exercise its jurisdiction in the present case, his lordship accepted the guidance of Eve, J., in *In re Jacques Settled Estates* [1930] 2 Ch. 415. This tenant for life had made his application a long time after the work was done. Moreover, his application could not be more favourably regarded when no scheme had been submitted by him and when the expense had been incurred at a time when there was no power to order recoupment of a great part of it. His lordship did not think that, considering the probability that the applicant knew at the time that he incurred these expenses that he had not, as the law then stood, any claim to recoupment in respect of the improvements subsequently authorised by the Settled Land Act, 1925, there would be any injustice done if the court did not order repayment. In respect of the remainder of the expenditure, a proper sum should be repaid to the applicant.

COUNSEL: *Turnbull; Byrne; Buckmaster.*

SOLICITORS: *Rider, Heaton, Meredith & Mills; Burch & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Obituary.

Mr. J. G. HURST, K.C.

Mr. John Gibbard Hurst, K.C., Recorder of Birmingham, arrived ill at Victoria Station on Monday last and died on on his way to St. George's Hospital immediately afterwards. It appears that he was on his way to his chambers in the Temple and was apparently in his usual health on leaving home. He was sitting as Recorder of Birmingham last week and was due on Wednesday at the Assizes there. He was admitted a solicitor in 1891 and twelve years later was called to the Bar, taking silk in 1919. He was a sound commercial lawyer. W. P. H.

FIFTY YEARS A PRACTISING SOLICITOR.

Mr. Charles Richard Steele, solicitor, senior partner (for over forty years) in the firm of Francis Miller & Steele, of Omnibus House, 6, Finsbury-square, completed fifty years as a practising solicitor on Tuesday last, the 1st inst. His two sons are both associated with him in the business.

Societies.

The University of London Law Society.

At a meeting of this society, held on Monday, 9th November, Sir Frederick Pollock delivered an address on

THE LAWYER AS A CITIZEN OF THE WORLD.

He said that when he had been called to the Bar, sixty years ago, most of the profession had looked upon the study of Roman law and jurisprudence as an academic fad. Questions of foreign law, when they arose, could be mugged up with the help of an affidavit or two made by experts, who emerged from their usual obscurity for the occasion. A specialist in one branch of the law might know little of any other branch. There had been illustrious exceptions, but such had been the general tone down to the last quarter of the nineteenth century. A curious result of this insularity had been that English lawyers had professed to be minutely critical in dealing with their own authorities, but had had no sense of general historical evidence.

Nowadays nearly all this was changed. The world-wide development of modern commerce and travel had brought different systems of law into such frequent contact that almost every issue of the law reports bore witness to it. Moreover, the sequels of the war had brought international law to the front and no man who aimed at being an accomplished lawyer could succeed without making himself a citizen in the commonwealth of cosmopolitan jurisprudence. This demanded an acquaintance with the principles and outline of classical and modern Roman Law which required an adequate knowledge of Latin and would be all the better for ability to consult the leading Continental commentators. A general understanding of Roman law was the key to modern continental systems and continental lawyers' way of thinking. Even official translations were by no means always to be trusted, and gross mistakes as well as lesser mistranslations in idioms were apt to creep in if the student relied on translators. Moreover, in international law there was an atmosphere of Romanist ideas expressed in forms which in a general way were continental and in which on the whole French evidence predominated. Thus to be at his ease in cases involving the conflict of laws the lawyer should know French; German and Italian were also useful. To a man reasonably well acquainted with the terms and the classical scheme of Roman jurisprudence and with at least one modern language besides his own, there was no mystery about the study of international law. Commonsense was much more important than extensive reading.

Americans were much nearer to the continental point of view than to the insular one which prevailed in England—though not in Scotland. This caution was very necessary for the avoidance of misunderstanding. There was within the domains of the common law a wide field for the expansion of ideas and for the discipline of comparative study. The law of England might not have been adopted as a whole, but the materials of the criminal, commercial and general civil laws were in substance English in India, the Malay States, the Pacific, Australia, New Zealand and most parts of North America. The Bar in general, and even the Bench, hardly seemed to be aware that on more than one point of pure common law the American leading cases gave fuller and more satisfactory expositions than anything in our own reports, while on other points they brought valuable and instructive confirmation. It was no credit to this country that American lawyers knew much more of what our House of Lords, Judicial Committee and Court of Appeal were doing than we did of the judgments rendered at Washington, Boston and New York.

Most English lawyers were still in a state of profound ignorance about the law of Scotland, a highly interesting and often practically important subject. Insufficient acquaintance with the principles and methods of Roman law was at the root of this ignorance. There were things worth the pains to be learnt from Scots law and procedure, and good pickings for mediævalists. In the law of immovable property the Scots held to this day the feudal principles of the Middle Ages.

While doubtless it was possible to earn a living in the profession of the law without burdening oneself with these extra subjects, Sir Frederick Pollock concluded, he had been addressing himself to those who aimed higher.

Among those present at the lecture were Professor J. E. G. de Montmorency, Professor C. A. W. Manning, Professor Hughes Parry, Dr. Edwin Deller, Dr. Nembhard Hibbert and Dr. Allen Mawer.

Oxford University.

The Board of the Faculty of Law has awarded the Winter Williams Scholarship to James Muir Watt, Exhibitioner of Balliol College. Gerard Joseph Ignatius Miller (Balliol) was specially commended.

Law Students' Debating Society.

Meetings will be held at The Law Society's Court Room, 60, Carey-street, Chancery-lane, as follows:—

Wednesday, 9th December, 1931, at 8.15 p.m.—A joint debate in the form of a mock trial will be held with the Junior Council of the London and National Society for Women's Service at their premises The Women's Service Hall, 46, Tufton-street, Great Smith-street, Westminster. His Honour Judge Shewell Cooper will preside. The debate will be concerned with the law of homicide.

Tuesday, 15th December, 1931, at 7.30 p.m.—Chairman, Mr. P. H. North-Lewis. "That the present foreign policy of France is a danger to the peace of the world." Affirmative, Mr. A. L. Ungoed-Thomas; Negative, Mr. J. M. Buckley.

The Solicitors' Managing Clerks' Association.

FESTIVAL DINNER.

The Festival Dinner of this Association was held at the Wharncliffe Rooms on 26th November, the President, Mr. Ebenezer Smith, taking the chair. Among those present were The Right Hon. Lord Macmillan, Mr. Justice Eve, Mr. Justice Maugham, His Honour Judge Owen Thompson, K.C., Master Burnand, Master Willmott, Mr. Charles Doughty, K.C., Mr. A. T. Miller, K.C., Mr. Fergus D. Morton, K.C., Mr. W. P. Spens, K.C., Mr. Trevor Watson, K.C., Mr. P. H. Martineau (President of The Law Society), Commander K. B. Miller, Mr. J. H. N. Armstrong, Mr. F. W. Beney, Mr. L. A. Boy, Mr. Colson, Mr. B. R. Cecil, Mr. F. E. Ellis, Mr. W. A. Ling, Mr. N. L. C. Macaskie, Mr. M. D. Macduff, Mr. C. E. Macklin, Mr. Fred Marcy, Mr. Noel Middleton, Mr. Matthew Robinson, Mr. P. G. Simmonds, Mr. Tindal Davis, Mr. A. O. Thomas and Mr. Ralph Wordsworth.

LORD MACMILLAN proposed the health "The Association." He described himself as the "tribal praiser" of the Association, deriving his title from a gaudily-decorated, dancing, gesticulating and shouting figure whom Lord Buxton had met during a trip up country while he was Governor-General of South Africa. He had learned that this was the person whose duty it was to recite the glory of the tribe when strangers were present. He was there, he said, to say those things which modesty prevented the members from saying for themselves, and which might bring a blush to their cheeks; after all, there was no cheek like that of modesty. He had not been entirely uninstructed in the matter—although, on turning to the back of the document, he had not noticed any interesting figure. From the document he had gathered that the activities of the Association in the past year had been admirable in every way. As a Scotsman he had naturally looked first at the balance sheet, and he congratulated them on being greater than the nation to which they belonged in that their balance sheet balanced. They had also carried out an admirable course of instruction and maintained an excellent library. Altogether the Association was doing, and doing admirably, just those things which it had been designed to do. So infectious was its prosperity and so attractive its ideals that it already had a branch—in Bournemouth—the charter of which had been signed during the previous week. He hoped that the movement would spread throughout the country. He had it on his conscience to discharge a very old debt. Just thirty-eight years ago he had first entered a solicitor's office and been put under the kindly guidance of a managing clerk. There he had served for three years, for, unlike most of his brethren on the Bench, he had served his Articles. They were more particular in Scotland, for there even the judges had to pass examinations; that was why he had come to England! He could lick stamps with anybody, and he knew how to stitch up paper with pink thread. When in error a volume was published entitled "Love Labours of a Law Lord," it would be found that a considerable number of letters had been indited by him in his employer's time and on his employer's stationery to the lady who was now his wife.

He was glad to see that the Association was so civilised as to have ladies at the annual Festival. This was particularly appropriate, as he always wondered, when viewing the Solicitors' Managing Clerks' Association, who managed the solicitors' managing clerks. He related the story of Mr. Choate, once American Ambassador to this country, who, in the course of an eulogy of the Pilgrim Fathers, had urged

his audience not to forget the pilgrim mothers, who had had to endure all the hardships endured by the Pilgrim Fathers and also to endure the Pilgrim Fathers.

He thought that just now the legal profession ought to take advantage of the quite exceptional position of public life to carry out some of those reforms which had been spoken of so much lately. In every profession came times when gears needed overhauling. There might not be very much wrong with the law, but there were some things that ought to be done. No time was more opportune than the present. He concluded by quoting Oldbuck's eulogy of the legal profession in Scott's "The Antiquary," and declared that the Association had left nothing undone that they might have done in giving delightful hospitality; they had taken every precaution in that they had remarked "Lord Macmillan will be supported by His Majesty's Judges"—a precaution that after their hospitality might well be necessary.

Replying to the toast, Mr. EBENEZER SMITH remarked that the report supplied to Lord Macmillan had only gone up to the end of the year 1930. Since then the Association had removed to larger and more commodious premises. Their new landlord was present that night and his heart would be comforted to hear what excellent tenants he had. The Association had existed for nearly forty years and the new branch at Bournemouth was its first. He read a telegram of warm greetings from that branch and said that the second branch was to be established in Sheffield shortly. He referred to the lecture programme, monthly meetings and classes for junior clerks, whereby the Association endeavoured to educate its members and their juniors with the aim of promoting efficiency. He mentioned the hard work put in by the various officers, and reported that the pension fund made all the progress that could be desired.

"HIS MAJESTY'S JUDGES."

Mr. P. H. MARTINEAU, proposing this toast, said that it was a time-honoured one always received with enthusiasm and gratitude by all the members of the legal profession and their staffs and, indeed, by the whole people of England. The reason was easy to find. The administration of justice was the first concern of any Government and the love of justice was characteristic of the British race wherever it was found. It had made us what we were and enabled us to build up the great Empire of which we were so proud. The people of this country were fortunate in having a body of judges prepared not only to administer the law, but also to stand between the people and the executive and to uphold the privileges and rights they had won. (Applause.) An Englishman could be sure that if there were no precedent to meet his case, the judge would find some way out and justice would be done. This was a very great thing. The purity of our justice was beyond question and the prompt and fair administration of our criminal law was the envy and admiration of the whole world. He himself was deeply grateful for the loyalty and support that he had received from managing clerks for more than forty years.

Mr. Justice MAUGHAM, in reply, said that he thought it would not be amiss to remind them that purity and integrity had not always characterised the Bench. Edward I—rather miscalled "the English Justinian"—had appointed a number of judges and had thereafter gone to France for three years to indulge in the then favourite occupation of fighting the French. The judges had had small salaries, but had found means to amass enormous wealth while their king had been abroad. On his return the whole of the judicature of England had been indicted for bribery and corruption; only two of them had got off. The Chief Justice of Common Pleas had caused some of his personal enemies to be murdered by his servants and had then either acquitted the murderers when they came to trial or had shielded them from accusation. He had escaped in disguise and taken sanctuary at a convent of the Minor Friars of Edmundsbury, where he had for some time escaped notice dressed as a novice (parenthetically, Mr. Justice Maugham said that he would like to see his brother Eve dressed as a novice!). Whether because he had not fitted the costume, or for some other reason, his presence had become known and the convent had been put into a state of siege. He had therefore come out of sanctuary and had been taken to the Tower and tried by a council of the King. He had been offered three alternatives: to stand his trial, to submit to imprisonment for life, or to abjure the realm, and had chosen the third. A hundred years later another Chief Justice had been taken from the Tower on a hurdle and hanged at Tyburn. There had been other strange judges in history. At the time of the Stuarts a judge who delivered a judgment obnoxious to the court had been removed from his position in the course of the next few days. The result had been that judges used constantly to return to work at the Bar. There was therefore nothing in the atmosphere of this country that it happened to have judges that deserved the encomiums of Mr. Martineau. During the last hundred years, however—up to the time when he himself had been appointed—the Bench in England had been filled by persons of the greatest ability, integrity, skill and devotion, many of them quite unknown to history.

A country got the judges it deserved, and if the country did not think fit to value its judges they might revert to the standards of the time of Edward I. The economic blizzard had not left the judges untouched, but it was a case of being frostbitten in the toe only. Their faces, wigs and the upper part of their bodies—in fact, all of them that was visible in court—were unaffected. He hoped that when the economic blizzard was over, the country would do all it could to preserve the prestige of the High Court of Justice.

His Honour Judge OWEN THOMPSON, also in reply, said that he was embarrassed by his ignorance of history in following Mr. Justice Maugham, who not only studied history but also wrote it, as well as making it day by day. The position of the County Court judges had always puzzled him. Judges of the High Court were accustomed to refer to other judges as "Brother" so and so, but when they made references to the learned judgments delivered at Slowcome-on-Mud by members of the County Court Bench, they named the judge. He would like to be called "Cousin" so and so. A County Court judge was a distant relation and often came from the country—in fact, a country cousin. He begged the High Court to remember the position of the judge who travelled fifty miles in his Ford car to hear three judgment summonses, and, after committing two unfortunate debtors for periods of time not exceeding forty-two days, returned to his home after a well-done day's work. He deserved the title of cousin. County Court judges had opportunity to learn and also to forget. If he had forgotten his equity, it was because he had had one equity case during his whole period of service. It had been a beautiful case, with second mortgages and sub-mortgages all complete, and he had prepared in advance an order at which Seaton would have gazed with pleasure. On arrival at court he had found that the mortgagor had tendered principal and interest in Treasury notes over the table before ever the case began! County Court judges had the opportunity to learn much of the English language, but as ladies were present he did not intend to refer to what he had recently heard called—very appropriately—"unseen" language. He hoped that the County Court Bench would always be considered the people's court. It dealt with those who often could not speak for themselves and it was sometimes very hard to get at their trouble.

Mr. Justice EVE, proposing "The Ladies," said he had no idea why this duty had been committed to him. He supposed it was because those responsible were of the opinion that he had come to an age when he could do no further mischief (a mistake, by the by) and an age when he could express their devotion to the fair sex in restrained and moderate language. There was, however, one member of the judicial bench adequately equipped in all respects to attend to this toast, one who had never had the pluck or the temerity to tie himself up to one lady and who had acquired as numerous and varied an experience as might be expected to fall to the lot of a thoroughly respectable bachelor, one who still manifested a phenomenally intimate acquaintance with ladies' apparel, an acquaintance derived, Mr. Justice Eve was sure, from long and serious examination of those realistic pictures reproduced in the illustrated catalogues of respectable firms. He would not disclose his brother's identity, for fear of an action for slander, nor was any prize offered for those who discovered and disclosed it.

He was painfully aware that there were those present to whom his observations would be more acceptable were they voiced from behind a door or screen which would veil from their eyes a certain excess of frontage. This offensive and offending frontage, however, was not due to over-indulgence in dry or liquid food. There were other causes which might lead to like effects. Most of them knew those amiable young gentlemen who appeared outside their homes and played solos on the cornet, trumpet, bassoon, flageolet or flute. Where did they keep the breath to produce those amiable and delicate sounds? They must have some huge internal reservoir. Or again, that huge protuberance might denote the frugal and self-denying vegetarian. Few would deny that a sustained diet of watercress, lettuces, radishes, cabbages, cauliflower, beans and carrots would lead to dilation. Yet it was known that from the gallant ranks of men who played wind instruments and from the concourse of those who met in Miles's restaurant day by day to—swallow the food, washed down by cold water, ginger-beer, cherry cider or some other nauseating beverage had arisen many an ardent suitor and devoted husband, men who might even leave behind

them a whole basket of sprouts or bunch of seedlings to perpetuate their flatulent memories. Having utilised this opportunity for directing their studies of masculine *embonpoint*, he concluded by declaring that lawyer men were the salt of the earth and their ladies were the sugar.

Mr. CHARLES DOUGHTY, replying, repudiated the suggestion that Mr. Justice Eve had made, and declared that—perhaps with a little course of slimming—the learned judge might yet win laurels where soldiers failed.

Mr. JOHN BLACKBURN paid a warm tribute to the work of the Chairman as President and Secretary of Lectures, and Mr. EBENEZER SMITH briefly replied.

Parliamentary News.

Progress of Bills.

House of Lords.

Abnormal Importations (Customs Duties).
Royal Assent. [20th November.

Educational Endowments (Scotland).
Read Second Time. [1st December

Expiring Laws Continuance.
Royal Assent. [1st December.

Merchant Shipping (Safety and Load Line Conventions).
Read Third Time. [26th November.

National Health Insurance (Prolongation of Insurance).
Read Second Time. [2nd December.

Statute of Westminster.
Report. [2nd December.

House of Commons.

Educational Endowments (Scotland).
Read Third Time. [25th November.

Indian Pay (Temporary Abatements).
Read Third Time. [26th November.

National Health Insurance (Prolongation of Insurance).
Read Second Time. [25th November.

Questions to Ministers.

STATUTE OF WESTMINSTER BILL.

Mr. DONNER asked the Secretary of State for Dominion Affairs whether any steps have been taken by His Majesty's Government to ascertain the views of the Governments of the Australian States upon the provisions of the Statute of Westminster.

Mr. THOMAS: The provisions of the Statute of Westminster Bill have been designed to maintain the existing constitutional position in relation to the Australian States. Steps have been taken both by His Majesty's Government in the United Kingdom and by His Majesty's Government in the Commonwealth of Australia to inform the State Governments of the position. [1st December.

COUNTY BOROUGHS (ELECTIONS).

Dr. HILLMAN asked the Secretary of State for the Home Department whether he is aware that if a candidate duly nominated for election for a vacancy in a ward of a county borough dies before polling day, the corporation must apply to the High Court for authority to conduct a new election, and that the costs arising from this are heavy; and whether he will take steps to simplify the procedure in such a manner as to save this drain upon the local rates.

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT (Sir Herbert Samuel): Yes, sir; there will probably be general agreement that the law needs amendment in this respect, and the point has been noted for legislation when a suitable opportunity offers. [1st December.

LAND VALUATION.

Mr. LAMBERT asked the Chancellor of the Exchequer whether any, and if so, what, instructions have been issued to the valuers engaged in the valuation of land under Part III of the Finance Act, 1931, that the valuations shall proceed on a gold or a sterling basis.

Major ELLIOT: No special instructions have been issued. These valuations would naturally be expressed in terms of sterling. [1st December.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. SAMUEL RONALD COURTHOPE BOSANQUET, LL.B., K.C., to be an Official Referee of the Supreme Court, in the place of Sir Edward Hansell, K.C., who has resigned.

Mr. OSWALD C. ISARD, solicitor (Sparks, Russell, Isard & Co.), 32, Walbrook, E.C., and Tonbridge, has been appointed Clerk to the Patternmakers Company in succession to the late Mr. William Sparks.

The Hon. Sir COURTHOPE WILSON, K.C., Vice-Chancellor of the County Palatine of Lancaster, has been elected Treasurer of the Honourable Society of Gray's Inn for the year 1932 in succession to Sir CECIL WALSH, K.C., who has been elected Vice-Treasurer for the same year.

Mr. JOHN S. MUIRHEAD, LL.B., has been appointed Secretary to the University Court, Glasgow, in succession to Dr. Alan Clapperton.

At the Annual General Meeting of the Society of Advocates in Aberdeen, held on the 24th November, Mr. F. J. COCHRAN was reappointed to the office of President, Mr. G. W. S. WALKER was appointed Treasurer, Mr. F. W. KAY was reappointed Secretary and Librarian, and Mr. CHARLES WILLIAMSON, C.A., Auditor.

Mr. FRANK C. BUDGE, M.A., B.L., Assistant Clerk in Lord Moncrieff's Bar in the Court of Session, has been appointed Depute-Clerk of Session in succession to the late Mr. John Cairns.

The King has been pleased to appoint Mr. DAVID CLARKE PATTERSON, Indian Civil Service, to be one of the Judges of the High Court of Judicature at Calcutta in the place of Sir Arthur Herbert Cuming, Knight, Indian Civil Service, who has retired.

Mr. F. G. G. GRIFFITH, solicitor, Lincoln (of the firm of Danby, Epton's & Griffith), has been appointed Under-sheriff for that city in succession to Mr. J. W. F. Hill.

Mr. H. W. TRUSTED, barrister-at-law, Attorney-General of Cyprus, has been appointed Attorney-General of Palestine, to succeed Mr. Norman de Mattos Bentwich.

Professional Announcements.

(2s. per line.)

Dr. THEODOR LERS, German Advocate, who has been practising in London for upwards of 30 years, has resumed his practice as an expert on German Law and translator to the legal profession, at 45, Great Marlborough-street, W.1. Telephone: Gerrard 1664.

TOKIO LOAN JUDGMENT.

The Supreme Court of France decided on Tuesday that French holders of City of Tokio bonds must be repaid in francs of the full pre-war value (worth 10d. each) instead of at the current rate (about 3d. each).

This decision, which is of much interest to British holders of French War Bonds, who are repaid at the depreciated rate of the franc, confirms the previous verdict given by a Paris court.

RETIREMENT OF OFFICIAL REFEREE.

The retirement of Sir William Hansell, K.C., as one of the Official Referees of the High Court, to which he was appointed in 1927, was referred to in court on Tuesday.

Mr. Trevor Watson, K.C., said that he desired, on behalf of the Bar, to thank Sir William for the extreme patience and forbearance which he had always shown to those appearing before him. In his retirement Sir William took with him the good wishes of the Bar.

Sir William Hansell, in replying, said that he was sorry to leave. The cases which he had had to hear were often difficult and concerned technical matters of which he knew very little, but he had always received the greatest assistance from counsel.

NATIONAL FEDERATION OF MASTER PAINTERS.

An interesting feature of the recent Exhibition organised by the National Federation of Master Painters and Decorators of England and Wales, was the organisation by the White Lead Publicity Bureau of a special studio service in the preparation of colour designs for the decoration of house interiors.

An offer of this kind must have far-reaching possibilities with the general public, of whom an increasing number are interested in the modern cult of colour, and it is also well known that many decorators find the preparation of painted designs a serious tax on their resources, and such an auxiliary service as that offered by the White Lead Publicity Bureau is likely to be a boon to those whose office equipment does not provide for the preparation of sample selling designs. Incidentally, the offer of such designs by the Bureau at a guinea each looks like a most economical arrangement. [*Advt.*]

The Home Secretary, in a written Parliamentary reply, states that he does not propose at present to introduce legislation for consolidating and amending the Acts dealing with betting and gaming.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE.	MR. JUSTICE MAUGHAM.
			Witness. Part I.	Non-Witness.
M'nd'y Dec. 7	Mr. Hicks Beach	Mr. Ritchie	Mr.*Hicks Beach	Mr. Jones
Tuesday .. 8	Andrews	Blaker	Blaker	Hicks Beach
Wednesday 9	Jones	More	*Jones	Blaker
Thursday . 10	Ritchie	Hicks Beach	Hicks Beach	Jones
Friday 11	Blaker	Andrews	*Blaker	Hicks Beach
Saturday .. 12	More	Jones	Jones	Blaker

DATE	GROUP I. MR. JUSTICE BENNETT.	MR. JUSTICE CLAUSON.	GROUP II. MR. JUSTICE LUXMOORE.	MR. JUSTICE FARWELL.
M'nd'y Dec. 7	Mr.*Blaker	Mr. More	Mr.*Andrews	Mr. Ritchie
Tuesday .. 8	*Jones	Ritchie	*More	*Andrews
Wednesday 9	*Hicks Beach	Andrews	*Ritchie	More
Thursday . 10	Blaker	More	Andrews	*Ritchie
Friday 11	Jones	Ritchie	*More	Andrews
Saturday .. 12	Hicks Beach	Andrews	Ritchie	More

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (20th September, 1931) 6%. Next London Stock Exchange Settlement Thursday, 17th December, 1931.

	Middle Price 2 Dec. 1931.	Flat Interest Yield.	Approximate Yield with redemption
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	81½	4 18 2	—
Consols 2½%	52½xd	4 15 3	—
War Loan 5% 1929-47	95	5 5 3	—
War Loan 4½% 1925-45	93	4 16 9	5 4 0
Funding 4% Loan 1960-90	82	4 17 7	4 19 0
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	89	4 9 11	4 12 6
Conversion 5% Loan 1944-64	98	5 2 0	5 2 6
Conversion 4½% Loan 1940-44	93	4 16 9	5 5 0
Conversion 3½% Loan 1961	71½	4 17 11	—
Local Loans 3% Stock 1912 or after	60½xd	4 19 2	—
Bank Stock	246	4 17 7	—
India 4½% 1950-55	72	6 5 0	—
India 3½%	48½xd	7 4 4	—
India 3%	40xd	7 10 0	—
Sudan 4½% 1939-73	92½	4 17 4	4 19 0
Sudan 4% 1974	81½	4 18 2	5 1 9
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	83	3 12 3	4 4 0
Colonial Securities.			
Canada 3% 1938	87½xd	3 8 7	5 5 6
Cape of Good Hope 4% 1916-36	92½	4 6 6	5 15 0
Cape of Good Hope 3½% 1929-49	76½xd	4 11 6	5 12 6
Ceylon 5% 1960-70	98½	5 1 6	5 1 6
Commonwealth of Australia 5% 1945-75	75½xd	6 12 5	6 15 0
Gold Coast 4½% 1956	89½xd	5 0 7	5 5 6
Jamaica 4½% 1941-71	91½	4 18 4	5 0 0
Natal 4% 1937	92	4 7 0	5 17 4
New South Wales 4½% 1935-45	69½xd	6 9 6	7 7 9
New South Wales 5% 1945-65	69	7 4 11	7 10 3
New Zealand 4½% 1945	86½	5 4 0	5 19 0
New Zealand 5% 1946	92½xd	5 8 1	5 15 9
Nigeria 5% 1950-60	98½	5 1 6	5 2 0
Queensland 5% 1940-60	73½	6 16 1	7 2 0
South Africa 5% 1945-75	94½xd	5 5 10	5 6 9
South Australia 5% 1945-75	72½xd	6 17 11	7 0 6
Tasmania 5% 1945-75	77½	6 9 0	6 12 6
Victoria 5% 1945-75	73xd	6 17 0	7 0 0
West Australia 5% 1945-75	78½	6 7 5	6 10 0
The prices of Stocks are in many cases nominal and dealings often a matter of negotiation.			
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	59½xd	5 0 10	—
Birmingham 5% 1946-56	100	5 0 0	5 0 0
Cardiff 5% 1945-65	100	5 0 0	5 0 0
Croydon 3% 1940-60	68½	4 7 7	5 2 6
Hastings 5% 1947-67	100½	4 19 6	4 19 6
Hull 3½% 1925-55	77	4 10 11	5 4 0
Liverpool 3½% Redeemable by agreement with holders or by purchase	70½xd	4 19 3	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	51	4 18 0	—
London City 3% Consolidated Stock after 1920 at option of Corporation	60	5 0 0	—
Metropolitan Water Board 3% "A" 1963-2003	59½	5 0 10	—
Do. do. 3% "B" 1934-2003	60	5 0 0	—
Middlesex C.C. 3½% 1927-47	85½	4 1 10	4 16 0
Newcastle 3½% Irredeemable	72	4 17 3	—
Nottingham 3% Irredeemable	60	5 0 0	—
Stockton 5% 1946-66	99½	5 0 6	5 1 0
Wolverhampton 5% 1946-56	99½	5 0 6	5 1 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	77	5 3 11	—
Gt. Western Railway 5% Rent Charge	92	5 8 8	—
Gt. Western Rly. 5% Preference	74½	6 14 3	—
L. & N.E. Rly. 4% Debenture	67	5 19 5	—
L. & N.E. Rly. 4% 1st Guaranteed	60½	6 12 3	
L. & N.E. Rly. 4% 1st Preference	44½	8 19 9	—
L. Mid. & Scot. Rly. 4% Debenture	69½	5 15 2	—
L. Mid. & Scot. Rly. 4% Guaranteed	61	6 11 2	—
L. Mid. & Scot. Rly. 4% Preference	44½	8 19 9	—
Southern Railway 4% Debenture	70	5 14 4	—
Southern Railway 5% Guaranteed	89	5 12 4	—
Southern Railway 5% Preference	64	7 16 3	—